

ARTICLE 8 – REPRESENTATIONS AND WARRANTIES

8.07 Company represents and warrants that it all compounds or equipment provided to Contractor shall belong to Company and that, to the best of its knowledge, will not infringe any patent, copyright, trade secret or other proprietary right of any third party.

8.08 Each party represents and warrants that it will treat any personally identifiable information stemming from any Services hereunder in complete confidence and will not take any action with respect to such information or data inconsistent with that permitted by any informed consent signed by a volunteer or other individual with whom such Services are performed.

8.09 When appropriate, Company will provide Contractor with sufficient amounts of all compounds, materials, or other substances (the "Test Materials") with which to perform the Services, as well as such data as may be necessary to apprise Contractor of the stability or safety of the Test Materials or any other materials to which the Services relate including, without limitation, data relating to proper storage and safety requirements.

[Change current 8.07 to 8.10]

ARTICLE 10 - INDEMNIFICATION

10.01 Contractor shall defend, indemnify and hold harmless Company, its affiliates, and its and their respective directors, officers, attorneys, agents and employees (collectively, "Company") from and against all third party claims, liabilities, suits, losses, damages and expenses, including costs and reasonable attorney's fees (collectively, "Claims"), relating to or resulting from (i) any injury to persons or property arising out of Contractor's use of any compound or equipment provided to Contractor by Company not in accordance with the relevant Project Agreement or other written directions provided by Company; (ii) any actual or alleged infringement of any patent, copyright, trade secret, or other proprietary right by the Services, any Invention (defined in Section 12.02) or Work Product; (iii) the negligent or intentional acts or omissions of Contractor or its Personnel in performing Services; or (iv) Contractor's failure to perform or breach of this Agreement or any Project Agreement in each case except to the extent that Company is required to indemnify Contractor for any such Claims pursuant to Section 10.2 below.

10.02 Company shall defend, indemnify and hold harmless Contractor, its affiliates, and its and their respective directors, officers, attorneys, agents and employees from and against all Claims relating to or resulting from (i) any injury to persons or property arising out of Contractor's use of any compound or equipment provided to Contractor by Company in accordance with the relevant Project Agreement or other written directions provided by Company; (ii) the negligent acts or omissions of Company; ~~or~~ (iii) Company's failure to perform or breach of this Agreement or any Project Agreement; or

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(iv) the harmful or otherwise unsafe effect of any compound or material to which the Services relate including, without limitation, tobacco or products including tobacco, including Claims related to the use or marketing of any such product, in each case except to the extent that Contractor is required to indemnify Company for any such Claims pursuant to Section 10.1 above.

10.03 The indemnified parties shall have the right to exercise reasonable control over any litigation within the scope of this Article 10 insofar as it concerns Claims against them. If any indemnified party desires to participate in such litigation through counsel of its own choosing, it may do so in its sole discretion and at its own expense. If the indemnifying party is not notified promptly of the Claim, the indemnities provided under this Article 10 shall be inapplicable to the extent the indemnifying party is prejudiced by the delay in notice. All indemnified parties shall cooperate to the extent necessary in the defense of any Claim within the scope of this indemnity. No settlement of a Claim shall be made by an indemnifying party absent either consent of the indemnified party or a complete release of the indemnified party from any and all liability for the Claim by the claimant therein.